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**VESTAS-AMERICAN WIND TECHNOLOGY, INC.**

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

**VESTAS-AMERICAN WIND  
TECHNOLOGY, INC.**  
a California corporation,

Plaintiff,

vs.

**BEAIRD COMPANY, LTD.**  
a Louisiana company, and

**BEAIRD INDUSTRIES, INC.**  
a Delaware corporation, and

**DOE Defendant,**

Defendants.

Case No.:

**CV '07 - 1651**

**PK**

**COMPLAINT FOR  
DECLARATORY JUDGMENT  
OF PATENT NON-INFRINGEMENT**

**COMPLAINT FOR DECLARATORY JUDGMENT**

*18241*

**PARTIES AND JURISDICTION**

1. Plaintiff Vestas-American Wind Technology, Inc. (“Vestas”) is a corporation organized under the laws of California, having its headquarters and a principal place of business in this District at 1881 SW Naito Parkway Ste. 100, Portland, Oregon 97201.

2. On information and belief, defendant Beaird Company, Ltd. (“Beaird Company”) is a Louisiana corporation which has done business and has sought to do business in the state of Oregon, and has continuing business contacts with the state of Oregon.

3. On information and belief, defendant Beaird Industries, Inc. (“Beaird Industries”) is a Delaware corporation which has done business and has sought to do business in the state of Oregon.

4. On information and belief, Plaintiff alleges that Doe Defendant may have some ownership interest in the patents in suit, and authorized the below-identified actions of the Defendants.

5. On information and belief, Samuel F. Eakin exercises effective control over the Beaird Company and Beaird Industries. On information and belief, Samuel F. Eakin is a controlling stockholder of the Beaird Company, and serves as the President and Chief Executive Officer of the Beaird Company. Beaird Company and Beaird Industries are collectively referred to as “Beaird” or “Defendants.”

6. On information and belief, Samuel F. Eakin, acting as a representative of Beaird, has conducted meetings with representatives of Vestas in the state of Oregon and has entered into contracts with Vestas for the sale and purchase of wind turbine generation towers. Mr. Eakin, who upon information and belief was acting as a representative of Beaird, conducted meetings with representatives of Vestas in the state of Oregon and in this District, in part, for the purpose of alleging that Vestas infringes patents owned by Beaird, that Vestas owes Beaird a royalty and that sales of wind turbine generation towers by Vestas can be enjoined.

7. Beaird has claimed to Vestas that Vestas infringes United States Patent Nos. 6,467,233 (“233 patent”), which issued on October 22, 2002; 6,470,645 (“645 patent”), which issued on October 29, 2002; and 6,532,700 (“700 patent”), which issued on March 18, 2003 (collectively “the patents in suit,” true copies of which are attached hereto as Exhibits A-C) by importing and selling certain support towers for turbine wind generators. True ownership of the patents in suit has not been determined, but on information and belief, records at the United States Patent and Trademark Office reflect that Beaird Industries is the current assignee of the patents in suit.

8. Beaird has claimed to Vestas that it has opinions of counsel regarding the infringement of the patents in suit by wind turbine generation towers sold by Vestas.

9. This action arises under the patent laws of the United States (Title 35 of the United States Code).

10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1338(a) and 2201–2202.

11. Actions by Beaird have caused and created an actual, immediate and substantial controversy between the parties, regarding the issue of non-infringement of any valid claim of the patents in suit.

12. This Court has general and specific (limited) personal jurisdiction over Beaird under ORCP 4.

13. Defendants have conducted and continue to conduct regular and substantial business in this District, including the negotiation of multiple supply and related contracts with Plaintiff, a resident of this State, including such contracts with Vestas in this District concerning wind turbine generation towers sold and to be sold by Defendants to Vestas. Defendants have made threats and allegations of patent infringement in this Judicial District from which this suit directly arises.

14. Plaintiff is informed and believes Defendants have had substantial, continuous and systematic contacts with this District since approximately 2005. These contacts include ongoing legal obligations including warranty obligations covering wind turbine generation towers. Defendants have entered a substantial number of contractual agreements with Vestas, since Vestas opened its headquarters in this District, concerning the manufacture, sale, and servicing of wind turbine generation towers of a design that Defendants apparently contend is patented by the patents in suit. These contracts provided for continuing obligations by Defendants, including warranty obligations, with respect to those towers. The parties have agreed any disputes relating to these contracts are to be arbitrated in Oregon.

15. On their World Wide Web page <http://www.beairdco.com/products/wind-towers.html> (visited November 1, 2007), Defendants imply, apparently, that all of the wind turbine generation towers they offer for sale are patented by the patents in suit.

16. On information and belief, Defendants' largest U.S. customer for the wind turbine generation towers that they contend are patented by the patents in suit, has been Vestas, which is headquartered in this District.

17. On information and belief, Defendants have sold and/or sought to sell wind turbine generation towers, installed in this District, that they contend are patented by the patents in suit.

18. On information and belief, Defendants allege that the wind turbine generation towers that they have sold to Vestas are patented by the patents in suit, and thus allege, in effect, that they have impliedly licensed the patents in suit to Vestas, a resident of this District.

19. Defendants have purposefully directed their patent infringement allegations and threats against Vestas, a resident of this District, knowing that Vestas was a resident of this District and knowing that at least some of the business activities of Vestas that it was challenging were transacted in and from this District.

#### **DECLARATION OF PATENT NON-INFRINGEMENT**

20. Paragraphs (1) through (19) are incorporated by reference herein.

21. On information and belief, Beaird Industries, Beaird Company and/or Doe Defendant each have owned, or purported to own, one or more of the '233 patent; the '645 patent; and the '700 patent.

22. Vestas has never infringed and does not currently infringe any valid claim of the '233, '645, or '700 patents.

23. Vestas is entitled to a declaration that it does not infringe any valid claim of the '233, '645, and '700 patents.

**PRAYER FOR RELIEF**

WHEREFORE, Vestas requests:

- A. a declaration that Vestas has not infringed any valid claim of the '233, '645, and '700 patents;
- B. a declaration that all Defendants and each of their officers, employees, agents, alter egos, attorneys, and any persons in active concert or participation with them be restrained and enjoined from further prosecuting or instituting any action against Vestas claiming that the '233, '645, and '700 patents are infringed, or from representing that the products or services provided by Vestas, or use of those products or services by others, infringe the '233, '645, and '700 patents.
- C. an award to Vestas of reasonable attorneys' fees under 35 U.S.C. § 285; and
- D. such other relief as the Court deems just and proper.

Respectfully submitted,

Dated: November 2, 2007

By:



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